Book Reviews

Ole Lando and Hugh Beale (eds.), **Principles of European Contract Law – Parts I and II – Combined and Revised**, The Hague/London/Boston: Kluwer Law International (2000) xlviii + 561 pp.

This book is the fruit of a process which started a quarter century ago when Ole Lando and Winfried Hauschild of the EC Commission sat next to each other at a dinner in the framework of a symposium on an EEC Draft Convention on the Law Applicable to Contractual and Non-Contractual Obligations. Mr Lando and Mr Hauschild easily agreed that the proposed draft convention – and similar efforts which might follow – would not satisfy the need for legal certainty in an integrated European market. Uniform substantive rules would be needed. This was in Copenhagen in 1974 and launched the quest for the principles of European contract law.

According to the editors, the following benefits are simultaneously pursued with the formulation of these principles:

(1) the facilitation of cross-border trade;
(2) the strengthening of the Single Market;
(3) the creation of an infrastructure for Community laws governing contracts such as contracts on consumer credit, insurance, doorstep sales, etc.;
(4) the provision of guidelines for national courts and legislatures; and
(5) the construction of a bridge between civil law and common law.

For these purposes the principles are intended to serve as a foundation for European legislation, as well as a model for judicial development of contract law. They can become directly applicable as a modern formulation of the *lex mercatoria* and by express adoption of the parties to a contract.

As is well-known, a Commission on European Contract Law was established in 1980 with financial support from the European Commission and other sources. It was composed of pre-eminent scholars and attorneys from all Member States of the EU and met roughly every six months. Its work concentrated at first on the rules on due performance and the remedies for non-performance. The results were published in 1995 in English and subsequently also in French and German. Further work of the Commission dealt with rules on the formation of contracts, authority of agents to bind their principal, as well as validity, interpretation and effects of contracts. The

present book contains both sets of rules, whereby those on due performance and remedies for non-performance are published in a revised version.

Pages 1 to 94 contain all 131 principles as a consolidated text in English and French. The structure of chapters, sections and articles, all with their clear and straightforward headlines, makes the text easily accessible and usable. Subsequently, the main part of the book consists of an article by article commentary in English, providing the reader not only with explanations ('Comment') but also with an apparatus of references to European and national legislation and court decisions ('Notes'). In particular the comments are extremely well written and easily understandable. The extensive Annex contains an international bibliography, a series of national bibliographies, a table of cases by Member States, with references to page numbers in the Notes, a table of European and national code provisions and legislation, again with references to page numbers in the Notes, and finally a keyword index. All of this guarantees that the reader – including newcomers to the field – quickly finds whatever he or she may be looking for.

Overall, the present book is not only a wonderful tool for eccentrics like me who are occasionally teaching an entire undergraduate course on 'General Principles of Contract Law' based virtually exclusively on the European Principles of Contract Law. It is addressed to all those who have recognized the immense wealth of inspiration to be drawn from a comparative approach to law but who have neither the time nor the resources to investigate the contract law of several, let alone all EU Member States when drafting judgments or legislation. Finally, and most concretely, the book is indispensable for all those who are seeking straightforward and equitable rules for their international contracts, rules which are much more specific than for example the Unidroit Principles.

The work of the Commission on European Contract Law is by no means finished. At the moment, chapters on the effects of illegality and immorality, conditions in contracts, the assignment of claims, the assumption of debts, pluralities of debtors and creditors, and other issues of general contract law are being prepared. Thus, we may already look forward to a second volume to the present book. In the mid-term, we must hope that the reception of the rules in practice will be such as to encourage the initiators of the project to tackle also the drafting of uniform rules for specific contracts, in particular sales agreements and agreements for works and services. For the time being, the present book is an excellent marketing tool for the distribution of the Principles of European Contract Law.

Frank Emmert

David Schultz (ed.), **Leveraging the Law – Using the Courts to Achieve Social Change,** New York: Peter Lang (1998) 354 pp.

Alexis de Tocqueville noted in *Democracy in America* in 1840 that 'There is hardly a political question in the United States which does not sooner or later turn into a judicial one' and that 'Americans have given their courts immense political power'. This stands in contrast to Alexander Hamilton's view, as expressed in the Federalist Papers, that limitations upon the judiciary's ability to enforce its decisions and upon how it would decide cases would ensure that the courts would not be powerful political institutions, but instead would be the 'least dangerous' branch of the government. This fundamental conflict is the point of departure of the book, however, not in a sense of whether the courts *should* have this kind of power but whether they actually *can* exercise the influence sometimes ascribed to them.

In his introduction, the editor presents the meta-questions which the book seeks to address: 'Do courts and the law matter? Can legal institutions significantly affect public opinion, encourage political mobilization, or influence the functioning and operations of social institutions? Do legal norms constrain behaviour or are political preferences more important in controlling the choices of judges and political actors?' To respond to these questions a first chapter by John Bohte, Roy B. Fleming and B. Dan Wood, of Texas A&M University, presents the results of an empirical study on the media impact of selected Supreme Court decisions, the idea being that if the media do not publicize important court decisions, there will not be the public awareness and debate which are necessary if the decisions are to stimulate social change. The results of the study are ambiguous. On the one hand, decisions such as *Brown v. Board of Education* or *Roe v. Wade* produced significant increases in media coverage of the areas. On the other hand, the amount of attention clearly depended also on the responses from the government and public at large and thus factors outside the control of the courts. Chapter 2 by Michael Paris and Kevin McMahon, formerly at Brandeis University, attempts a reassessment of the well-known studies by Rosenberg and McCann on the questions of social change brought about by courts. The authors essentially argue that Rosenberg's approach 'obfuscates' the potential role of the courts. They advocate certain modifications to be made to McCann's work as the best analytical framework. Chapter 3 by Robert Van Dyk at Pacific University shows that litigation by pro-choice activists was able to mobilize political consciousness and thus contribute to social change. David Schultz, University of Wisconsin River Falls, and Stephen E. Gottlieb, Albany Law School, co-authored Chapter 4, arguing that legal functionalism can provide new insights into how the courts and the law define and redefine structures, institutions and expectations and in that way exercise an important influence in social developments which tends to be underestimated. Similarly, Bradley Canon, University of Kentucky, concludes in Chapter 5 that the impact the Supreme Court has had and can exercise directly or 'inspirationally' suggests a power which is 'vastly underrated'.

In Chapter 6, Gerald Rosenberg, University of Chicago, who has been much

criticized by the other authors, defends his position that the impact of the courts is frequently more based on hope and desire rather than 'hardcore evidence'. After having read the other chapters, which all come to largely opposite conclusions, this part is the most interesting of the book and forces the reader to take position. Chapter 7 by Marvin Zalman of Wayne State University adds a critique of recent works by political scientists who attempt 'juricide' by negating the impact or even existence of law. Lawyers will be consoled by his conclusion that, after all, 'law matters'. The book concludes with a vote by Michael McCann of the University of Washington in favour of new approaches in the definition of law, its role in society, and its power to trigger change, resistance, and consciousness.

A subtitle to this book could be 'Courts and Law in American Society', since it is clearly and exclusively focused on the American experience. However, after an initial disappointment at the lack of international comparative analysis, this reader discovered the wealth of doctrinal and methodological lessons which can be learned from the book and which can then be applied in a European context.

Frank Emmert

Petar Sarcevic and Paul Volken (eds.), **Yearbook of Private International Law, Vol. I,** The Hague/London/Boston: Kluwer Law International – in association with the Swiss Institute of Comparative Law (1999) 374 pp.

At the turn of the millennium the editors present a new periodical for intellectual exchange between specialists of private international law. They correctly predict that in spite of all efforts at the unification of substantive law, there will always be a certain divergence in legal rules on personal, family and property matters. Even in those areas where uniform law has made the most progress, in trade and commerce, the need for unification and the reality of unification are still two distinct and different animals and this is not about to change. Thus, the question whether private international law can be sent into retirement soon is clearly answered in the negative. Hence the editors invite the submission of manuscripts on theoretical and practical aspects of private international law in its widest sense, including traditional conflict of law questions, international civil procedure, as well as international cooperation between States and international organizations.

The first issue includes articles by Maarit Jänterä-Jareborg on 'Marriage Dissolution in an Integrated Europe – The 1998 European Union Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters', Petar Sarcevic on 'Private International Law Aspects of Legally Regulated Forms of Non-Marital Cohabitation and Registered Partnerships', Hans-Ulrich Jessurun d'Oliveira on 'The Artifact of Sham Marriages', and Paul Volken on 'How Common are the General Principles of Private International Law? America and Europe Compared'. Furthermore, there are five 'National Reports' on recent

important developments in the private international law of Venezuela, Switzerland, China, Hungary and Germany. 'News from The Hague', several shorter articles and a section with 'Texts, Materials and Recent Development' and 'Book Reviews', complete the issue. Last but not least, there is a very useful subject-matter index.

One may question the need for yet another periodical, as well as the suitability of a yearbook for an area which has increasingly seen dynamic and rapid development, but the expertise of the editors and the general quality of workmanship of the first issue will ensure that this work finds its place as an important publication in the area of private international law.

Frank Emmert